90-1662

Supreme Court, U.S.
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No. 90–

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

*On behalf of* CHRISTOPHER BAIRSTOW,
*a Minor,*

FRED BAIRSTOW,
*Petitioner,*

vs.

CAROLYN BAIRSTOW,
*Respondent.*

TO PETITION FOR A *WRIT OF CERTIORARI* TO THE
APPELLATE COURT OF THE SECOND DISTRICT
OF THE STATE OF ILLINOIS

# PETITION FOR *WRIT OF CERTIORARI*

Fred Bairstow, *pro se*
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## QUESTIONS PRESENTED FOR REVIEW

(1) Can a child be compelled to undergo chemically induced behavior modification?

(2) Can an uncle enter a plea for his wronged minor nephew when no other remedy is available?

(3) Can a person be denied his right to speak against prescription drugs?

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## OPINIONS DELIVERED

Chancery court orders: Petition for injunction against administration of the chemical, Ritalin, dismissed. The court said "neither the pleading requirements nor evidentiary requirements had been met." Motion for attorney fees dismissed.

Family court order: A restraining order against the Petitioner granted. Petitioner ordered not to talk to "anyone who is involved or connected in any activity of any nature with Christopher."

Appellate court orders: Petitioner does not have standing. Order dismissing injunction against Ritalin affirmed. Restraining order upheld. Denial of fees affirmed. Rehearing denied.

Illinois Supreme Court orders: Petition for leave to appeal denied. Stay of mandate allowed.

## JURISDICTIONAL GROUNDS

Date of the entry of denial of petition for leave to appeal to the Illinois Supreme Court: February 6, 1991. The Court has jurisdictional to review the judgment by *writ of certiorari* under 28 U.S.C., section 1257.

## CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances."

U.S. Const. Amend. V: "No person shall...be deprived of life, liberty, or property, without due process of law...."

U.S. Const. Amend. XIV, section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## PEOPLE INVOLVED IN CASE

Christopher Bairstow, as of May, 1991, a ten-year old child.

Ms. Eva Schwartzman, attorney — respondent's counsel.

Mr. Jan Bairstow, Christopher Bairstow's father, petitioner's brother.

The Honorable Raymond McKoski, judge of the chancery court.

Dr. Sharon Libit, M.D., Christopher Bairstow's physician hired by Mrs. Carolyn Bairstow after divorce.

Fred Bairstow, Ph.D. (University of Utah, 1970), the uncle of Christopher Bairstow — the petitioner.

Mrs. Carolyn Bairstow, the custodial mother of Christopher Bairstow per divorce decree dated April, 1989 — the respondent.

Mrs. Janice Prepura, appointed during 1989 divorce proceedings as a social worker.

Unnamed school teachers.

The Honorable Jane Waller, judge of the family court.

## STATEMENT OF CASE

Prior to the dissolution of the marriage of Christopher's parents, Christopher was taking a relatively small dose of the chemical, Ritalin, prescribed by the family doctor. Leading to that decision were school teachers (ST) reporting that Christopher was unruly in the classroom. During the divorce, a social worker, Mrs. Janice Prepura (JP), was appointed by the family court as a mediator. The social worker (JP) recommended that Christopher's mother, Carolyn Bairstow (CB), be awarded custody, which occurred. (R. C8, 89CH730)

Following the divorce, the social worker (JP) was hired by Christopher's mother (CB). (R. C82, 89CH730). The social worker (JP) then recommended that Christopher's custodial mother (CB) see a physician, Dr. Sharon Libit, MD (P), who the social worker (JP) knew. (R. C2, 89F1949). The physician (P) greatly increased the dosage of Ritalin prescribed for Christopher. (R. C2, 89F1949). Christopher's father, Mr. Jan Bairstow (JB), did not want his son given high doses of Ritalin, yet he did not act. (R. C1, 89CH730). Christopher's uncle, Fred Bairstow (FB), filed a petition seeking next friend status and an injunction against the administration of Ritalin. (R. C1, 89CH730). Christopher's mother (CB) with her counsel Ms. Eva Schwartzman (ES) responded to the petition with a motion to dismiss. (R. C12, 89CH730). A hearing on the petition and motion was held in chancery court, the Honorable Raymond McKoski, judge (Jc) presiding. The petition was dismissed. (R. C81, 89CH730)

Counsel (ES) filed a petition in the family court, the Honorable Jane Waller (Jf) presiding, asking for a restraining order against Christopher's uncle (FB). The petition was allowed. Injunctive relief was added so that Christopher's uncle (FB) could not talk to anyone regarding "any activity of any nature with Christopher." (R C40, 89F1949). Counsel (ES) filed a motion with the chancery court (Jc) for her fees. It was denied. (R. C28 89CH730).

Christopher's uncle (FB) appealed; counsel (ES) cross-appealed. The chancery and family court actions were consolidated during the appellate appeal. The appellate court affirmed all of the trial court orders. An appellate court rehearing and leave to appeal to the Illinois State Supreme Court were denied.

## STATE COURT REVIEW OF THE FEDERAL QUESTIONS

The petitioner's petition filed on November 21, 1989 (R. C2,C6 89CH730) stated:

> Petitioner feels that Christopher Bairstow's personality is unique and that he does not suffer from a behavior pathology requiring medication. If the physician prescribing medication feels that Christopher requires a drug to protect society, then Christopher should be given the right of protection under the due process of law clause as provided by the Fourteenth Amendment to the United States Constitution. To either surgically or

> chemically alter Christopher's normal brain function deprives him of life and liberty, human rights which he is guaranteed.... The teachers at the state funded school where Christopher attends have labeled him with being unable to adjust to the classroom setting. This "branding" led the psychologist and physician to a diagnosis. Indirectly the state is responsible for the involvement of the psychologist and the doctor. The psychologist, Mrs. Janice Prepura was appointed by the family branch of this court to help negotiate the divorce of Christopher's parents earlier this year. Mrs. Prepura subsequently recommended to the custodial parent, Carolyn, that the physician, Dr. Libit, be consulted. Dr. Libit prescribed the psychotropic drug to which the petitioner objects. It is more than an embarrassment that the court appointed psychologist should use her influence to represent Carolyn.... Mrs. Prepura, by her action, and thus the court unwittingly, became parties to the 14th Amendment violation.

The petitioner then testified in court that "this attempt to control Christopher's behavior by state-paid personnel violated his United States Constitutional rights as found in the 14th Amendment." (R. C145 89CH1989)

The trial court dismissed the allegations with the explanation that "neither the pleading requirements nor evidentiary requirements had been met to issue a restraining order or injunction."

The petitioner brought up the federal question again to the appellate court. "The concept of cloning a child's personality with drugs needs to be stopped immediately by this honorable court on the constitutional grounds sought: U.S. Const., Amend. 5 and Amend. 14...." (plaintiff–appellant brief, p. 10)

The appellate court responded: "...Fred Bairstow's concern for the well-being of his nephew does not suffice to give him standing to sue for injunctive relief as to Christopher's interests.... Because his petition was properly dismissed, we need not consider his other assignments of error in this suit." See appendix D–5, 6.

In the family court action, the petitioner raised the federal question at the appellate level: "The plenary order entered by the court was overboard and violated defendant's rights of association and free speech. If the circuit court's December 29, 1989 order is upheld, the precedent would justify sweeping orders of protection and injunction against any and all civil litigants." (Defendant–appellant brief, p. 7)

The appellate court responded: "Fred Bairstow argues next that the order of protection improperly halted his injunctive suit against Carolyn Bairstow and that it violated his rights of free speech and association. The first argument is moot as the injunctive suit was properly dismissed, and the second has been waived

by Fred Bairstow's failure to raise it at the trial level or to support it with citation to authority on appeal." See Appendix, page D–7. Yet freedom of speech was raised at the trial court, recorded in the first proposed bystander's report (R. C49, 89F1949).

## IMPORTANCE OF THIS CAUSE

Many children are being treated with psychotropic prescription drugs. Most often parents are not informed enough to question this practice. A physician's recommendation carries considerable influence in our society. We imprison those dealing with mind–altering drugs, yet make exception for our physicians. Psychotropic drugs are dangerous.

## SUMMARY OF FIRST ARGUMENT

The child Christopher is being given a prescription psychotropic drug. Psychotropic drugs can be invasive and harmful. The custodial mother favors, the father does not approve of administering this compound. The father has not acted; the mother has conflicting interests. The uncle of Christopher has a bond of love similar to a parent. The uncle has brought suit for an injunction. A child is wronged when he has never been convicted of any crime, yet has his body and mind changed with chemicals.

## THIS CAUSE IS A STATE ACTION

The power of the medical profession over life and death is intertwined with the power of the state. In this

case, public school teachers and a state-appointed social worker influenced the decision to medicate Christopher. The state in allowing the use of psychotropic drugs to treat school children becomes a party to this action.

## STANDING OF PETITIONER

The petitioner brought this action in a state court and used state authority in doing so: *Clarke v. Chicago Title and Trust Co.*, 393 Ill. 419, 66 N.E. 2d 378 (1946). The holding of Clarke says that an infant is given "special protection" and is to be given "any and all legitimate defenses existing in his favor." Federal law holds that parents speak for their children. This cause represents a variance of the parent rule since the two parents are speaking in opposition. Then the uncle (FB) of Christopher speaks as a third voice. Thus, an adversary case is established, an injury is traceable, and there is a separation of powers: *Allen v. Wright*, 468 U.S. 737, 753, 104 S.Ct. 3315, 3325, 82 L.Ed. 2d 556, 570 (1984).

## COMPELLED DRUGGING OF CHRISTOPHER

Compelled psychotropic drugging has been sanctioned by the Court under very limited circumstances: *Washington v. Harper*, ___U.S.___ 110 S.Ct. 1028, 108 L.Ed. 2d 178 (1990). In Washington, Mr. Harper, an adult prisoner, was given psychotropic drugs. The rationale of Washington explores the dangers of psychotropic drugs. Does the court want to extend those dangers to a child who has never been

tried under due process? No. Children are best sculptured by nature.

SUMMARY OF SECOND ARGUMENT

An uncle sought an injunction against having his eight–year–old nephew being drugged with Ritalin. The mother of the child then obtained a restraining order and injunction against the uncle. The restraining order forbids the uncle from seeing his nephew. The injunction forbids the uncle from discussing the medicine of the child. A person is doubly wronged when his litigation is met with a restraining order and his freedom of speech with an injunction.

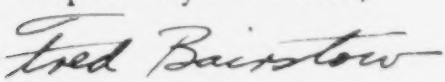
FREEDOM OF SPEECH OF PETITIONER

The petitioner spoke against drugging Christopher with Ritalin. The respondent claimed it was to harass her. However, the petitioner holds a doctorate in physiology, taught at the university level and published research papers. (ROP 38, 89CH730, R. 82, 89F1949) A basic premise of science is that all propositions are open to attack. Without this "scientific method", we have to rely on testimonials. A contest between the testimonial and scientific methods is documented in *Krebiozen Research Foundation v. Beacon Press*, 334 Mass 86, 134 N.E.2d 1, 7 (1956). The Supreme Judicial Court of Massachusetts allowed criticism of Krebiozen, which was being promoted as an anti-cancer drug. The rationale of the court was that "full information and free discussion are important in the search for wise decisions and best courses of action."

## CONCLUSION

Wherefore, for these reasons, the petitioner asks the Court to grant a *writ of certiorari* for a review of the order of the Second District Appellate Court of Illinois.

Respectfully submitted,



Fred Bairstow

# APPENDIX

No. 71125

IN THE SUPREME COURT OF ILLINOIS

| | |
|---|---|
| Carolyn Bairstow,<br>Respondent | Appeal from<br>Appellate Court<br>Second District |
| v. | 2–90–0008<br>2–90–0094 |
| Fred Bairstow<br>Petitioner | 89 F 1949<br>89 CH 730 |

ORDER

This matter has come for consideration upon the motion of petitioner to stay the mandate of this Court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the the period within which said application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

Filed Feb. 26, 1991, Supreme Court Clerk

ILLINOIS SUPREME COURT
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, Ill. 62706

February 6, 1991

Mr. Fred Bairstow
800 Clayton Street
Waukegan, IL 60085

No. 71125 — Carolyn Bairstow, respondent, v. Fred Bairstow, petitioner. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 28, 1991.

STATE OF ILLINOIS APPELLATE COURT SECOND DISTRICT

Appeal from the Circuit Court of County of Lake

Trial Court Number: 89F1949

THE COURT HAS THIS DAY, 10/24/90, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2–90–0008
Cons. Cases: 2–90–0094
Bairstow, Fred v. Bairstow, Carolyn

Petition by petitioner–appellant, defendant–appellant, Fred Bairstow, for rehearing denied.
(Reinhard, Unverzagt, McLaren, JJJ.)

LOREN J. STROTZ, Clerk

October 3, 1990

THE COURT HAS THIS DATE ENTERED THE FOLLOWING ORDER IN THE CASE OF: Gen. No. 2–90–0008 CONSOLIDATED CASE: 2–90–0094

The judgement of the Circuit Court of Lake County is affirmed (see attached order.)

Loren J. Strotz, Clerk

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

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| | |
|---|---|
| CAROLYN BAIRSTOW,<br><br>Petitioner–Appellee,<br><br>v.<br><br>FRED BAIRSTOW,<br><br>Respondent–Appellant, | Appeal from the Circuit Court of Lake County<br><br>No. 89–F–1949<br><br><br>Honorable<br>Jane D. Waller,<br>Judge, Presiding. |

| | |
|---|---|
| *In re* CHRISTOPHER BAIRSTOW,<br><br>a Minor<br><br>(Fred Bairstow, Petitioner–Appellant and Cross–Appellee v. Carolyn Bairstow Respondent–Appellee and Cross–Appellant). | Appeal from the Circuit Court of Lake County<br><br>No. 89–CH–730<br><br><br>Honorable,<br>Raymond McKoski,<br>Judge, Presiding. |

ORDER

Fred Bairstow appeals *pro se* the dismissal of his suit for injunctive relief against Carolyn Bairstow in case No. 89–CH–730 and from the issuance, in a separate proceeding, case No. 89–F–1949, of an order of protection under the Illinois Domestic Violence Act of 1986 (Ill. Rev. Stat. 1987, ch. 40, par. 2311–1 *et seq.*) against him and on behalf of Carolyn Bairstow and her minor child Christopher Bairstow. Carolyn Bairstow cross–appeals from the trial court's denial of her petition, pursuant to section 2-611 of the Code of Civil Procedure (Code) (Ill. Rev. Stat. 1989, ch. 110, par. 2–611), for attorney fees and costs in connection with Fred Bairstow's suit. We have consolidated the cases on appeal.

The marriage between Carolyn Bairstow and Jan Bairstow was dissolved in a judgment entered April 20, 1989. Carolyn Bairstow received sole custody of the couple's child, Christopher. Fred Bairstow is Jan Bairstow's brother and, therefore, Christopher's uncle. On November 21, 1989, Fred Bairstow filed his original *pro se* petition for injunctive relief against Carolyn Bairstow, alleging that she was, under the direction of a physician, administering the behavior modification drug Ritalin to Christopher and that Jan Bairstow did not want his son to receive the drug but had not yet voiced this opinion in any court proceeding. Fred Bairstow alleged that Christopher was being deprived of his civil and human rights, and he requested a restraining order forbidding further prescription and administration of any drug to Christopher for purposes

of behavior modification.

On November 29, 1989, Carolyn Bairstow moved to dismiss the petition on the grounds that it did not state a cause of action; that its allegations lacked specificity; and that Fred Bairstow lacked standing to bring the suit. She also petitioned for attorney fees pursuant to section 2–611 of the Code. Following argument of counsel, the trial court granted her motion to dismiss the complaint. The trial judge stated that neither the pleading nor evidentiary requirements had been met for injunctive relief. The court also denied Carolyn Bairstow's petition for fees and costs. On December 14, 1989, without leave of court, Fred Bairstow filed his "Amended Petition" for injunctive relief. The "Amended Petition" was based on the same grounds as the original petition.

On December 15, 1989, in a separate proceeding before a different judge, Carolyn Bairstow filed a verified petition pursuant to the Domestic Violence Act for an order of protection on behalf of herself and Christopher against Fred Bairstow. She alleged, *inter alia*, that Fred Bairstow had no standing to commence any proceeding over the care and custody of Christopher; that Fred Bairstow had a history of harassing Carolyn Bairstow and Christopher, including influencing Christopher on one occasion not to take his asthma medication and on another not to take Ritalin; that Fred Bairstow was persisting in his attempts to dissuade Christopher from taking Ritalin; that Fred Bairstow had tried to get information about Christopher from the principal of a school that

Christopher had attended; and that, as Fred Bairstow had persisted in his injunctive suit against Carolyn Bairstow by filing an amended petition without leave of the court, she would be compelled to spend more money on attorney fees and court costs unless he was restrained from continuing to file petitions and interfering with Christopher's health program. The trial court granted Carolyn Bairstow an emergency protective order effective until December 29, 1989.

On December 18, 1989, the trial court in Fred Bairstow's injunctive suit struck and dismissed the amended petition and granted Carolyn Bairstow's attorney leave to file a motion for her fees and costs. On December 22, 1989, Fred Bairstow moved to withdraw his amended petition, explaining that he now understood that the dismissal of his original petition had been with prejudice and that he therefore no longer wished to proceed with the hearing on the amended petition.

On December 29, 1989, the trial court in Carolyn Bairstow's suit, after a hearing as set forth in a bystander's report (107 Ill. 2d R. 3232(c)), entered a two–year plenary order of protection. The order prohibited Fred Bairstow from interfering with Christopher's medical program, entering or remaining at Christopher's former school, or discussing Christopher's health or medical program with anyone connected with any activity with Christopher. The order also awarded Carolyn Bairstow attorney fees and costs expended in bringing the suit, but not those incurred in defending against Fred Bairstow's petition

in the separate action.

On January 3, 1990, Carolyn Bairstow's attorney filed her petition for attorney fees and costs under section 2–611 related to Fred Bairstow's suit. After a hearing on January 24, 1990, the trial court denied Carolyn Bairstow's petition for fees and costs.

Fred Bairstow contends first that the trial court erred in dismissing his petition for injunctive relief in case no. 89–CH–730. Fred Bairstow raises several issues in this appeal. However, we agree with Carolyn Bairstow's contention that Fred Bairstow's concern for the well-being of his nephew does not sufficed to give him standing to sue for injunctive relief as to Christopher's interests. Standing requires some injury in fact to a legally recognized interest. (*In re Marriage of Rodriguez* (1989), 131 Ill. 2d 273, 280.) The primary focus of standing is that a party have a real interest in the action brought and its outcome. (131 Ill. 2d at 280.) A prospective party cannot gain standing merely through a self–proclaimed concern about an issue, no matter how sincere. (*Landmarks Preservation Council of Illinois v. City of Chicago* (1988), 125 Ill. 2d 164, 175.) Fred Bairstow is not the legal custodian of Christopher, and has asserted no legal interest of his that might entitle him to sue for injunctive relief as to another's interests. The trial court, therefore, correctly dismissed his petition for injunctive relief. We note too that this suit was not brought under the Juvenile Court Act of 1987 (Ill. Rev. Stat. 1989, ch. 37, par. 801–1 et seq.), nor did Fred Bairstow seek to file the action as next friend of Christopher Bairstow. Because his petition was

properly dismissed, we need not consider his other assignments of error in this suit.

Fred Bairstow also appeals the grant of an order of protection against him on behalf of Carolyn and Christopher Bairstow in case No. 89–F–1949. He argues first that the court lacked sufficient evidence that he had engaged in conduct actionable under the Domestic Violence Act of 1986. Ill. Rev. Stat. 1989, ch. 40, par. 2311–1 *et seq.*

The provisions of the Domestic Violence Act are to be liberally construed. (Ill. Rev. Stat. 1989, ch. 40, par. 2311–2.) Harassment occurs when a protagonist knowingly causes his victim to suffer undue distress, and the trial court has broad discretion to determine whether a particular individual's actions constitute harassment or other actionable conduct. (*People v. Whitfield* (1986), 147 Ill. App. 3d 675, 680.) The bystander's report of the hearing on the petition for an order of protection provides little of the testimony of the witnesses. Fred Bairstow, as appellant, has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and, in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. (*Foutch v. O'Bryant* (1984), 99 Ill. 2d 389, 391–92.) On this record we conclude the trial court could properly find that Fred Bairstow had on one occasion interfered with Christopher's medication program and that Carolyn Bairstow had suffered emotional harm and financial loss as a result of Fred Bairstow's

interference and filing of a lawsuit. The court found that Fred Bairstow had been guilty of harassment, interference with personal liberty, and intimidation of a dependent pursuant to such definitions under the illinois Domestic Violence Act of 1986. We find no abuse of discretion in the court's findings or its protective order.

Fred Bairstow argues next that the order of protection improperly halted his injunctive suit against Carolyn Bairstow and that it violated his rights of free speech and association. The first argument is moot as the injunctive suit was properly dismissed, and the second has been waived by Fred Bairstow's failure to raise it at the trial level or to support it with citation to authority on appeal. *Nugent vs. Miller* (1983), 119 Ill. App. 3d 382, 387; *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.* (1987), 118 Ill. 2d 389, 400–01.

Finally, Fred Bairstow contends that the trial court erred in cutting short his cross–examination of Carolyn Bairstow at the hearing on the final order of protection. The record on appeal is insufficient to support this claim of error or the basis upon which the trial court made such a ruling.

In her cross–appeal in case No. 89–CH–730, Carolyn Bairstow maintains that the trial court erred in not granting her attorney fees and costs under section 2–611 of the Code in connection with Fred Bairstow's injunctive suit. She contends that the record demonstrates that his persistence in a suit that lacked any legal foundation indicates that he was not

motivated by any proper purpose in bringing the suit. We note that Carolyn Bairstow was awarded $450 attorney fees in case No. 89–F–1949.

We initially observe that Supreme Court Rule 137 ((June 28, 1989) Official Reports Advance Sheets No. 13 (eff. August 1, 1989)) in effect at the time of the proceedings below, preempts all matters sought to be covered by section 2–611. (Ill. Ann. Stat., ch. 110A, par. 137, Committee Comments, at 68 (Smith–Hurd Supp. 1990).) Applying this rule as the court did below, we find no abuse in the trial court's denial of the petition for fees under the circumstances of this case. See *Wollschlager v. Sundstand Corp.* (1986), 143 Ill. App. 3d 347, 352.

The judgments of the circuit court are affirmed.

Affirmed.

Reinhard, J., with Unverzagt, P.J., and McLaren, J., concurring.

IN THE
CIRCUIT COURT OF LAKE COUNTY, ILLINOIS

---

People *ex rel* CAROLYN BAIRSTOW on behalf of herself and/or on behalf of CHRISTOPHER BAIRSTOW, a minor.
Petitioner

-vs-

FRED BAIRSTOW,
Respondent,

No. 89 F 1949

---

Honorable Jane Waller,
Judge Presiding

PLENARY ORDER OF PROTECTION

The following persons and their family members are protected by this Order: Carolyn Bairstow and Christopher Bairstow, a minor.

Based on the findings of this court, which are set out in a separate instrument filed with the court, and with jurisdiction of the subject matter and over all necessary parties. It is hereby ordered that:

1. With respect to all Protected Persons, Respondent is prohibited from the following: Harassment; Interference with personal liberty; Intimidation of a dependent; More particularly, interference by Fred Bairstow with the medical program for Christopher.

2. Respondent is prohibited from entering or

remaining at the Protected Person's school(s), namely Butterfield School, or at any place while any Protected Person is present.

3. Respondent is order to pay Petitioner $450 attorney fees and $91 court costs.

4. Respondent is further ordered and/or enjoined as follows: that he cease, desist and refrain from any discussion of Christopher's health or medical program with anyone who is involved or connected in any activity of any nature with Christopher.

This Plenary Order shall remain in effect until two years following date of entry of such Order, such expiration date being December 29, 1991.

This Order was issued on December 29, 1989

This is a final and appealable order.

Judge: Jane Waller (signed)

Eva Schwartzman
Attorney for Carolyn Bairstow
1590 South Milwaukee
Libertyville, IL 60048

IN THE
CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
LAKE COUNTY, ILLINOIS

---

FRED BAIRSTOW,
Petitioner,

No. 89 CH 730

vs.

In the Matter of
CHRISTOPHER BAIRSTOW,
a Minor.

---

Honorable Raymond McKoski,
Judge Presiding

ORDER

On motion of Eva Schwartzman, attorney for Carolyn Bairstow, mother of Christopher Bairstow and sole custodian of said minor per court order, it appearing that Fred Bairstow has filed an amended petition herein without leave of court, and that Eva Schwartzman, on behalf of Carolyn Bairstow, has prepared and filed motion to dismiss, this time to dismiss said amended petition, and it further appearing that the first petition herein was dismissed with prejudice, the court being fully informed and having duly considered, It Is Ordered,

A. Said "amended petition" is struck and dismissed with prejudice.

B. Eva Schwartzman is granted leave to file a motion for her fees and court costs incurred herein within 30 days and to serve same upon Fred Bairstow.

Judge: Raymond McKoski (signed)

Dated at Waukegan, Illinois this
18th day of December, 1989

Order prepared by:
Eva Schwartzman
Attorney for Carolyn Bairstow
1590 South Milwaukee
Libertyville, IL 60048

IN THE
CIRCUIT COURT OF THE NINETEENTH JUDICAL CIRCUIT,
LAKE COUNT, ILLINOIS

---

FRED BAIRSTOW,
Petitioner,

No. 89 CH 730

vs.

In the Matter of
CHRISTOPHER BAIRSTOW,
a Minor.

---

Honorable Raymond McKoski,
Judge Presiding

ORDER

On motion of Eva Schwartzman, attorney for Carolyn Bairstow, mother of Christopher Bairstow and a court–appointed custodian of said minor, the petitioner having presented his argument and Carolyn Bairstow having presented a motion to strike and dismiss, the Court being fully informed and having duly considered,

It Is Ordered that said petition for an injunction heretofore filed herein be and hereby is stricken and dismissed.

It is Further Ordered that attorney's fees under Section 2–611 of the Code of Civil Procedure in favor of

Carolyn Bairstow be and hereby are denied.

Judge: Raymond McKoski (signed)

Dated at Waukegan, Illinois this
29th day of November, 1989

Order prepared by:
Eva Schwartzman
Attorney for Carolyn Bairstow
1590 South Milwaukee
Libertyville, IL 60048

Supreme Court, U.S.
FILED
MAY 28 1991
OFFICE OF THE CLERK

(2)

No. 90-9-1662

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

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On Behalf of CHRISTOPHER BAIRSTOW, a minor

FRED BAIRSTOW Petitioner

vs

CAROLYN BAIRSTOW Respondent

---

TO OPPOSE PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE SECOND DISTRICT
OF THE STATE OF ILLINOIS

---

# ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EVA SCHWARTZMAN, Attorney for
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1590 South Milwaukee Avenue
Libertyville, Illinois 60048
708/362/0500

# I N D E X

## ANSWER OF CAROLYN BAIRSTOW TO PETITION FOR WRIT OF CERTIORARI


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(1) Allen v Wright, 104 S. Ct. 3315, 468 U. S. 737, 82 L. Ed. 2d 556 (1984)

This case is discussed at length on pp. 6, 7 and 8 of this Answering Brief. Had Fred really read this case he would never have filed his Petition for a Writ of Certiorari.. . . . . 18

(2) Clark v Chicago Title and Trust Company, 393 Ill. 419, 66 N. E. 2d 378 (1949)

In the Clark case the person representing the minors was recognized by the Court as the childrens' "next friend". In the case at bar Fred never achieved that status.. . . . . .19

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(3) Kriebiozen Research Foundation v Beacon Press
334 Mass. 86, 134 N. E. 2d 1 (1956)

This case is totally irrelevant. Fred is not a newspaper and the case at bar is not a public medium for the discussion of drugs. . . .19

(4) Washington v Harper,
_____ U.S. _____,
110 S. Ct. 1028
108 L. Ed. 2d 178 (1990)

This case, although cited by Fred, supports Carolyn 's position. Did Fred really read this case?. . . . . 19

VII. CONCLUSION. . . . . .20

## ANSWER OF CAROLYN BAIRSTOW TO PETITION FOR WRIT OF CERTIORARI

The opinion of the Appellate Court for the Second District of Illinois sets forth with great clarity the history of the facts of the case and the law applicable.

There are a number of errors, misstatements and omissions in the Petition for a Writ of Certiorari to which reference will be made and clarification provided hereafter.

### I.

### FRED BAIRSTOW HAS NO STANDING

There is only one issue in this case: does Fred Bairstow (hereinafter called Fred) have standing to seek an injunction against a mother, who has sole custody of the minor son, to prevent her from administering Ritalin to her son under the direction of a duly qualified and licensed physician for the

treatment of her son's malady?

No discussion of the merits can be reached until the question of standing is resolved for that controls the threshold to the lawsuit for the injunction and is the basis for the issuance of the Order of Protection.

The Supreme Court of Illinois has stated, in In Re Marriage of Rodriguez, 131 Ill.2d 273, 545 N. E. 2d 31, 137 Ill. Dec. 78 at page 81 (1989):

> "The purpose of the doctrine of standing is to insure that courts are deciding actual, specific controversies, and not abstract questions or moot issues... The primary focus of standing is that a party have a real interest in the action and in its outcome."
>
> "This Court has defined standing as requiring 'some injury in fact to a legally recognized interest'... In deciding whether a party has standing, a court must look at the party to see if he or she will be benefitted by the relief granted...Standing is a component of justiciability, and therefore must be defined on a case-by-case basis." (Underscoring supplied).

The Appellate Court of Illinois has defined "standing" in the case of Lynch v Devine, 45 Ill. App. 3d 743, 359 N. E. 2d 1137, 4 Ill. Dec. 185 at page 188 (1977) as follows:

> "The doctrine of standing, simply stated, requires that a party, seeking relief from the courts, must allege some injury in fact to some substantive, legally-protected interest of his, which is a right or interest either recognized by common law or created by statute... The doctrine is used to insure that the courts are available to decide actual, specific controversies between the parties and are not overwhelmed in the mire of abstract questions, moot issues or cases brought on behalf of other parties who do not desire judicial aid." (Underscoring supplied).

What "real interest" does Fred have in the administration of Ritalin to his nephew by a qualified medical doctor that would justify permitting him to enjoin the mother, as sole custodian, from giving her son Ritalin under a qualified doctor's direction?

The facts are:

1. Fred does NOT have custody of the child.

2. Fred is NOT a parent of the child.

3. Fred is NOT a guardian of the child.

4. Fred has NO obligation to support the child, to educate the child or to care for the health of the child.

5. Fred is NOT a part of any governmental agency qualified to inquire into the health treatment of a child.

6. Fred is NOT a medical doctor nor has he been licensed to practice medicine in the State of Illinois.

7. Fred has NEVER been given any legal standing by a court to act as "next friend", and no such court order has ever been entered.

Fred, an uncle to the child, states that he secures his "standing" from the fact that he loves his nephew. (C-51). In the eyes of the law that is not enough.

On page 4 of his Petition for a Writ of Certiorari herein Fred states:

> "he filed a petition seeking next friend status and an injunction against the administration of Ritalin."

That is not what Fred said on page 4 of his Appellant's Brief to the Second District Appellate Court of Illinois:

> "Fred Bairstow has asked the Court in a memorandum filed before the first hearing for Next Friend status to bring this action. (R-C5). During the hearing Fred Bairstow was prepared not to proceed with testimony and arguments if the judge had not granted him authority to do so. Fred asked the court for procedural status to bring this cause at the very beginning of the hearing.(R-81). After Fred asked for status he paused and waited for the judge to give him permission to proceed. (R C81). It was only after the judge responded affirmatively that Fred proceeded (R-C81)."

The is absolutely NOTHING in the record that shows the Court stated that Fred could have next friend status. What the Court did was simply say that he would listen to any argument that was made by Fred. The Court was being polite to a Pro Se applicant.

The politeness of a Judge, per se, has never been deemed the equivalent of a Grant of Authority to assume a particular legal

status. In the absence of a court order granting Fred "next friend" status, Fred must accept the reality that he has NO next friend status.

As the Appellate Court of Illinois said in its decision:

> "Fred Bairstow is not the legal custodian of CHRISTOPHER, and has asserted no legal interest of his that might entitle him to sue for injunctive relief as to another's interest." (Page D-5 of Petition for Writ of Certiorari.)

II

FRED HAS NO STANDING
UNDER FEDERAL LAW

Fred cites the case of Allen v Wright, 104 S. Ct. 3315, 468 U. S. 737 (1984 in support of his claim that he has standing. Admittedly the opinion in that case is long, but Fred should have, at least, read the majority opinion, and if he had, he would have learned that in federal court as well he has NO standing.

At 104 S. Ct. 3324 Justice O'Connor discusses the doctrine of standing as set forth in Warth v Seldin, 422 U. S. at 498, 95 S. Ct. at 2204:

> "' In essence the question of standing is whether the litigant is entitled to have the Court decide the merits of the dispute or of particular issues...'".

Justice O'Connor continues:

> "Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a complaint fall within the zone of interests protected by the law invoked....The requirement of standing, however, has a core competent derived directly from the Constitution. A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." (Underscoring supplied).

As can be seen, Fred, as uncle, has no concrete, personal interest in the medical program of the child that is recognized in law. His attempt to clothe h imself in his "love" for the child is a self-imposed concern without legal status.

Indeed, had he read Justice O'Connor's opinion carefully, he would have learned that under federal law he may not hide under the cloak of Christopher's constitutional rights and claim for Christopher that the child is being deprived of his constitutional rights.

See also Barrows v Jackson, 346 U. S. 249, 73 S. Ct. 1031 at page 1034 (1953):

> "Ordinarily one may not claim standing in this Court to vindicate the constitutional rights of some third party... The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of this Court in "cases" and "controversies"... Apart from the jurisdictional requirement, this Court has

> developed a complementary rule of self-restraint for its own governance (not always clearly distinguished from the constitutional limitation) which ordinarily precludes a person from challenging the constitutionality of state action by invoking the rights of others... The common thread underlying both requirements is that a person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation."

The Court then goes on to explain why it did depart from its usual rule (at page 1036) because

> "this Court will not permit or require California to coerce respondent to respond in damages for failure to observe a restrictive covenant that this Court would deny California the right to enforce in equity, Shelley, supra; or that this Court would deny California the right to incorporate in a statute...."

In other words, under his contract the co-covenantor was obligated to pay his co-covenantors damages for selling to a non-Caucasian, and he would thus be paying damages for something which the United States Supreme

Court had declared a violation of the Constitution, i.e. discrimination on the basis of race in the sale of real property.

Fred is under no contract to perform something which is against public policy. Indeed he has inserted himself into a matter that is "none of his business" and in which he has no legal standing.

## III

## THERE ARE NO CONSTITUTIONAL QUESTIONS IN THIS CASE

Initially there were two cases. The first dealt with Fred's petition for an injunction. He was barred at the very outset of that case because he had no standing to bring the action. Once his petition was dismissed with prejudice no

answer could be filed and there could be no presentation or discussion of the merits of the case. Hence any constitutional objection that Fred may have raised collapsed at the very beginning of that suit.

Because Fred would <u>not</u> stop trying to influence the child to not obey his mother and the physician, it became necessary for the mother to obtain more immediate and forceful action to stop Fred's interference. CAROLYN sought the Order of Protection on the ground that Fred had no "standing" to interfere in her medical program for Christopher, even though he was an uncle. The Family Court agreed and a plenary Order of Protection was entered prohibiting Fred for a period of two years

> "from the following: harassment, interference with personal liberty, intimidation of a dependent, more particularly interference by Fred Bairstow with the medical program of Christopher." (C-38).

During the hearing Fred advised the Court he was fearful that he might be falsely accused of future harassment, interference with personal liberties and intimidation of a dependent. The Court then said:

> "To prevent the opportunity for future abuse or false accusations he (Fred) is ordered not to see the child at all during the pendency of the order." (C-47,48).

Thereupon the following paragraph was added to the Order of Protection:

> "that he cease, desist and refrain from any discussion of Christopher's health or medical program with anyone who is involved or connected in any activity of any nature with Christopher." (C-40).

As can be seen from the foregoing, Fred requested the Court to "protect" him against future accusations. The Judge gave him good advice: stay away from Christopher and his medicine. To assure Fred's staying away, the Court with Fred's consent, included the suggestion in the order.

Fred nonetheless continues and persists in mixing apples and oranges. Because the federal constitution gives him freedom of speech, Fred thinks he can interfere with a particular minor's medical program and can try to influence the child not to take the medicine. Fred refuses to understand that he may speak against drugs on a public forum but he may not, even under the Constitution, interfere in the medical program of the child when Fred has no legal interest in that matter. Allen v Wright, 103 S. Ct. 3315, supra.

IV

CAROLYN'S COSTS.

Carolyn has now been compelled by Fred's activities to incur legal expenses and attorney's fees to represent her in the following matters:

A.

Fred's Suit for an Injunction

1. Preliminary conference with her attorney after service of Petition for Injunction.

2. In Court on return date of original Petition for Injunction. Preliminary preparation by her attorney of Motion to Strike and Dismiss original Petition. Hearing on same in Court and Motion to Strike and Dismiss with prejudice granted.

3. Fred served Motion to file an Amended Petition for an Injunction, without leave of Court. Motion prepared in opposition. In Court to argue the matter and Amended Petition was stricken and dismissed by Court Order, on Carolyn's Motion.

4. Fred then served Motion to withdraw Amended Petition. In Court and opposition to same by Carolyn's attorney. Order granted denying Fred's Motion on ground there was no Amended Petition in the case.

5. Preparation by Carolyn's attorney of Petition for attorney's fees for foregoing services. Hearing in Court. Carolyn's Motion for fees denied.

6. Appeal by Fred to Second District Appellate Court of Illinois. Receipt of Fred's Brief. Preparation and filing of Carolyn's Answering Brief.

B.

Carolyn's Petition for an
Order of Protection

7. Preparation and filing of Petition for Order of Protection prepared by Carolyn's attorney. Emergency Order of Protection issued.

8. Hearing in Court. Issuance of Plenary Order of Protection.

9. Appeal by Fred to Second District Appellate Court. Receipt of Fred's Brief. Preparation and filing of Carolyn's Answering Brief.

10. Motion by Carolyn's attorney to consolidate the cases in the Appellate Court. Motion granted.

11. Appellate Court affirms both Circuit Court decisions.

12. Motion by Fred asking for a re-hearing by the Appellate Court. Motion denied.

13. Petition by Fred for Leave to Appeal to the Illinois Supreme Court. Answer prepared in opposition thereto by Carolyn's attorney and filed. Petition for Leave to Appeal denied.

14. Petition for Writ of Certiorari to the United States Supreme Court filed by Fred. Answer in opposition now being prepared by Carolyn's attorney.

The persistent pursuit by Fred to harass Carolyn and to cause her expense has known no bounds thus far. Carolyn has won at each stage of the litigation and at each stage she and she alone has had to foot her bills for legal services. There was one exception. The Circuit Court which issued the order of Protection awarded CArolyn's attorney the sum of $592.00 to cover attorney's fees and expenses to obtain the Order of Protection. Her bill for legal services has run into the thousands. CArolyn asks when will this harassment end?

Supreme Court Rule 42 provides as follows:

> "2. When a petition for a writ of certiorari...is frivolous, the Court may award the respondent or appellee just damages and single or double costs. Damages may be awarded against the petitioner..."

Carolyn does not desire to unduly lengthen this Answering Brief and therefore is not at this time submitting a detailed statement of her attorney's bill. If the Court sees fit to regard Fred's petition for a Writ of Certiorari as frivolous within the meaning of Rule 42, Carolyn will submit a detailed bill for the expenses and fees which she has incurred as a result of Fred's wilful intransigence.

V

THE FATHER OF CHRISTOPHER

The parents of Christopher are divorced. Both are living. Carolyn, the mother, has been awarded sole custody of the child in the divorce action.

Fred has stated on pages 4,8 and 9 of his Petition for a Writ of Certiorari that

the father opposed the giving of Ritalin to the child. Nowhere, at any time, to either Carolyn, her attorney or the Court, has the father appeared or stated that he opposed the giving of Ritalin to the child. The father has never appeared in the litigation, either as party or witness.

Fred, knowing that he has no standing in the litigation, has sought desperately some cover of legitimacy. There is none. He knows it. So he resorts to fiction.

## VI.

## TABLE OF AUTHORITIES CITED BY FRED AND THEIR RELEVANCE.

1. Allen v Wright, 104 S. Ct. 3315, 468 U.S. 737, 82 L. Ed. 2d 556. (1984).

This case is discussed at length on pp. 6, 7 and 8 of this Answering Brief. Had Fred

really read this case he would never have filed his Petition for a Writ of Certiorari.

2. Clark v Chicago Title and Trust Co, 393 Ill. 419, 66 N. E. 2d 378 (1946).

Here the person representing the minors was recognized as their "next friend" in the litigation. In the instant case Fred does not have that status.

3. Kriebiozen Research Foundation v Beacon Press, 334 Mass. 86, 134 N. E. 2d 1 (1956)

This case is totally irrelevant. Fred is not a newspaper and the case at bar is not a general discussion of the danger of drugs etc. The case Fred has filed refers to a specific individual in whose medical program Fred is interfering: a case in which he is desperately trying to find standing and the facts cannot provide him with standing.

4. Washington v Harper, _____ U. S. _____, 110 S. Ct. 1028, 108 L. Ed 2d 178 (1990).

The Court in this case held that a medical doctor must make the decision as to whether the drug was to be administered. Did Fred read this case? The case clearly tells him that he cannot as a non-medical man intervene on behalf of others to determine the administration of the drug. This case supports Carolyn's position.

## CONCLUSION

Fred Bairstow refuses to understand the legal system, or if he does, he is deliberately abusing it. He has been informed by two Circuit Courts that he has no standing and thereno case. He has been informed by the Appellate Court of Illinois that he has no standing and therefore no case. He was denied a re-hearing by the Appellate Court.

He was denied leave to appeal to the Supreme Court of Illinois. He is now trying to get leave to appeal to the United States Supreme Court by filing a Writ of Certiorari.

He has been told and re-told that

> "a prospective party cannot gain standing merely through a self-proclaimed concern about an issue".

(See page D-5 of the Petition for Writ of Certiorari).

He nonetheless violates all rules of practice by discussing the merits of issues at every level, regardless of the rulings of the Court or the relevance of the issues.

Carolyn believes that nothing will stop Fred unless sanctions are imposed upon him, to make him understand that he cannot wilfully and irresponsibly continue to cause her

needless expense and that if he desires to do so, he must fully compensate her for such anguish and expense.

WHEREFORE Carolyn Bairstow prays the United States Supreme Court will:

1. Deny the petition for a Writ of Certiorari.

2. Affirm the opinion of the Illinois Appellate Court.

3. Impose damages and costs upon Fred Bairstow, and

4. End the charade which Fred has relentlessly pursued in his wilful exploitation of his vanity.

Respectfully Submitted,

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